IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH JAIPUR.

O R D E R

Esuf Kha and ors.
Vs.
Additional District Judge No.3 Kota and ors.

S.B. CIVIL WRIT PETITION NO.9173/2006.

Date of Order:- 22/5/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri S.S. Yadav for the petitioner.

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By way of this writ petition, the petitioner is challenging the order dated 25/7/2006 whereby his application filed under Order 9 Rule 13 CPC for setting aside the ex-parte decree passed against the petitioner on 18/11/2005 has been rejected by the learned Additional District Judge No.3, Kota.

Having heard learned counsel for the petitioner and perused the material available on record, I find that against the dismissal of the aforesaid application under O.9 R.13 CPC, an appeal is maintainable under Order 43 Rule 1(a) CPC and not a writ petition.

Therefore this writ petition is not maintainable.

So far as other application filed by the petitioner under Order 21 Rule 26 CPC is concerned, the objection raised in that application to the execution of the decree was to the effect that money has been borrowed by his wife Smt.Jahur Bee and therefore the same cannot be recovered from the assets of the petitioner. At the first blush, the writ petition is not filed bonafidely because the same has been filed by both, petitioner No.1 Esuf Khan and his wife petitioner No.2 Smt.Jahur Bee. I therefore, do not find any error apparent on the face of the impugned-order in rejecting the aforesaid application. However, the petitioner, if so advised, would be at liberty to file a Misc.Appeal against the rejection of his application filed under Order 9 Rule 13 CPC.

The writ petition is accordingly dismissed summarily.

(MOHAMMAD RAFIQ), J.

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